

# *A New Approach of the Croatian Tax Administration towards Taxpayers Based on Cooperation Instead of Repression: A True Change in Attitude*

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This article will analyse a shift in the tax administration's approach towards taxpayers, based more on cooperation than repression. This new approach, advocated by the OECD, is present in a growing number of countries and serves as an additional tool for ensuring timely tax collection. Croatia has recently adopted legislation regarding cooperative compliance, which makes the topic a highly interesting one. In a comparative analysis of selected countries the following issues will be discussed: the reasons for such a change in attitude, the way terminology is used by the leading organisations in the field, the way the change in attitude manifests itself through compliance programmes, the selection criteria for participating in the programmes, the main principles and objectives of the procedure, the

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way the procedure is structured, and the results of cooperative compliance programmes. Finally, some concluding remarks will be given.

*Keywords:* enhanced relationship, cooperative compliance, tax evasion and avoidance, Croatian tax administration

## 1. Introduction

Large businesses and multinational enterprises operate on a global scale. Differences in national legislative systems, their approaches to supervision, and enforcement methods can cause numerous difficulties in the way they do business. Indeed, one can say that tax authorities may have a tendency to consider the taxpayer's activities as solely or predominantly tax-motivated, which is not always the case. This is the reason why the OECD favours an "enhanced relationship" or rather "cooperative compliance" as an approach that is being increasingly adopted at an international level (OECD, 2008). The work of the European Union also follows this global trend and has been presented in a report entitled "Compliance Risk Management Guide for Tax Administrations" (European Commission, 2010).

Within the EU some forms of programmes based on cooperative compliance have been introduced in Austria, Belgium, Denmark, Germany, Finland, France, Ireland, the Netherlands, Norway, Spain, Sweden, and the UK (Stevens et al. 2012, p.109). In Southeast Europe it is Slovenia and FYR Macedonia that have introduced a programme of horizontal monitoring (Verbič et al., 2014, p. 65).

Modifications made to the Croatian Law on Tax Administration (NN 148/13, 141/14, Art. 83a) introduced a provision entitled "Granting of a special status to taxpayers in order to enhance voluntary tax compliance" (*Dodjeljivanje posebnog statusa poreznom obvezniku u svrhu promicanja dobrovoljnog ispunjenja poreznih obveza*). According to this provision tax authorities are allowed to grant a special status to the taxpayer within the scope of the voluntary tax compliance programme. The Ministry of Finance has recently issued a rulebook which further details the conditions in which this status can be granted to or revoked from a particular taxpayer.<sup>1</sup>

<sup>1</sup> Rulebook on the granting and withdrawing of the special status of the taxpayer in order to encourage voluntary tax compliance (OG 67/15).

In this article we will thus analyse the programmes of cooperation by means of which the tax administration cooperates with the taxpayers – a novelty in the Croatian tax system – by comparing them to the programmes introduced in the Netherlands, Slovenia, and France. The Netherlands was chosen because its model served as a basis for the Croatian (and Slovenian model), Slovenia was chosen as a neighbouring country whose experience can be used as a good reference point in comparison with the Croatian tax administration, and finally, France was chosen as a country that has a long tradition of taxation and serves as a comparative model to the Dutch one.

## 2. When Repression is no Longer Sufficient

Due to the intense liberalisation of capital movements in the 1980s and 1990s, tax evasion and tax avoidance became an important problem for countries all over the world. Member States of the EU (MS) are especially affected by this, due to the diversity of their respective legal systems. The situation in which economic operators profit from the elimination of tax barriers, while national tax authorities remain confined to their jurisdictions, calls for coordinated action by the MS in order to effectively tackle tax evasion and tax avoidance. No country can deal with this problem alone. Although the issue of tax evasion and tax avoidance is not a recent one, the MS became more conscious of the sheer magnitude of the problem during the latest economic crisis. In their final communiqué issued on the occasion of the Moscow 2013 G20 Summit, the finance ministers, led by those of the UK, France, and Germany (George Osborne, Pierre Moscovici, and Wolfgang Schäuble respectively), stated: “We are determined to develop measures to address base erosion and profit shifting, take necessary collective actions and look forward to the comprehensive action plan the OECD will present to us in July.” This call to action is just a drop in an ocean of similar documents, stressing the importance for the MS to rapidly address this growing problem.

Although there are numerous definitions of tax evasion and tax avoidance, for the purposes of this article we shall refer to tax evasion as an: “inherently illegal activity that is punishable by criminal sanctions. It is an action by a taxpayer which entails breaking the law and which moreover can be shown to have been taken with the intention of escaping payment of tax. The illegality arises through the failure to declare properly the appropriate amount of assessable income derived in an otherwise legal transaction.”

(Merks, 2006, p. 272) Tax avoidance, on the other hand, is a notion that is far more difficult to grasp. The limits between what is considered to be acceptable tax planning and unacceptable tax avoidance are sometimes very hard to determine.

The OECD Report on International Tax Avoidance and Evasion states that: "It should be added that successful tax reduction is neither a sufficient nor a necessary test of tax avoidance. It is not sufficient because this would cover acceptable tax planning and it is not necessary because an avoidance scheme designed to reduce tax may not succeed." On the other hand, the report considers (based on a case) that: "This (the case) would constitute a tax avoidance arrangement because: a) it offends the spirit of the law which allows relief on genuine interest; b) the main benefit from the transaction is the obtaining of a tax benefit not the obtaining of a loan; c) the whole scheme is artificial; it is not carried out in a normal commercial manner" (OECD, 1987, p.12). Thus, one can conclude that the necessary elements for an action to be considered tax avoidance are not that it be illegal, but rather it must offend the spirit of the law for the purpose of obtaining a tax benefit and must be carried out in an artificial and not a commercial manner.

Even though the tax gap as a result of tax avoidance is very hard to measure, even for the most developed countries, all key players agree that it is a problem that needs to be settled urgently and in a comprehensive manner. In this sense, the OECD as the major driving force besides the EU, in its report on base erosion and profit shifting states that: "... a holistic approach is necessary to properly address the issue of BEPS. Government actions should be comprehensive and deal with all the different aspects of the issue." (OECD, 2013a, p. 7) The report proceeds to suggest a series of measures designed to tackle the issue, destined to solidify tax systems across the world.

However, having a solid tax system is not in itself sufficient to tackle tax evasion and tax avoidance, and to ensure the recovery of the necessary income from taxes. What is also required is a good system of procedural rules which will ensure that tax rules are indeed respected.

Tax evasion and tax avoidance cannot be studied separately from the notion of tax compliance (*civisme fiscal*). Bouvier distinguishes two concepts of tax compliance, both in its initial, classical form, as well as in its contemporary form. The classical form of tax compliance means that the taxpayers need to give their approval of the newly introduced taxes in the form of parliamentary consent, according to which tax laws are voted in by their parliamentary representatives (Bouvier, 2012, p. 25).

In Croatia, this rule translates into the form of the constitutional principle of legality by which the tax administration is bound in their actions. In this sense, Art. 5 of the Constitution stipulates that each law needs to conform to the Constitution and that every other legal act needs to conform to the law and the Constitution. Art. 19 of the Constitution, on the other hand, stipulates that each individual administrative act needs to be founded in the law and that judicial control of the act needs to be guaranteed.

Nowadays the notion of tax compliance has become even more important because of the changes that the tax systems underwent during the 20th century. Previously, real estate taxes as well as income taxes were assessed on the basis of external, visible indicators which were easily perceivable. The tax assessor walked down the street and examined the properties. It was therefore very easy to assess tax obligation. Without any kind of contract and on the sole basis of legal presumptions attached to external signs, the tax agent was able to objectively and automatically determine the amount of tax that was due.

However, analytical taxes were, progressively and almost entirely, replaced by synthetic ones, which in return had great repercussions on the nature and manner of tax assessment. In order to correctly assess taxes, it is important for the tax assessor to be familiar with the entire financial situation of the taxpayer. Who else but the taxpayer himself is better placed to know his financial situation? It is only logical that the direct method, based on the taxpayer declaring his own taxes, came to know such a surge in importance during the 20th century. Associating the taxpayer and the tax administration in the determination of the tax base, the direct method implies not only faith of the tax administration in the accuracy of the tax form but also sincerity on the part of the taxpayer.

An appropriate system of verification had to be put into place in order to minimise the risk of fraud. With contacts between the tax administration and the taxpayers becoming ever more frequent, it became rather exceptional that a tax assessment procedure should happen without the intervention of the tax administration. This is how the tax audit procedure became one of the essential elements of tax policy.

Primarily, it has to guarantee tax compliance, in other words, a respect for and a sound application of the tax laws. The purpose of a tax audit procedure is to rectify all the intentional or unintentional errors in a tax return form by performing an in-depth analysis of the claims stated in it. Secondly, a tax audit procedure needs to ensure equality amongst taxpayers. This function is essential to maintain the acceptance of taxes by

the taxpayers, who need to contribute to public expenses in proportion to their revenues. At a time when the amount of public debt is attaining historic values, tax audit procedures represent a major factor in ensuring that equality among citizens is respected. Finally, tax audits guarantee the recovery of taxes, one of the main sources of public revenues.

The intrusive and repressive character of a tax audit can create in the taxpayer a feeling of frustration, obliging him to divulge modes of operation, professional secrets, or details of the directors' private lives. This is why the intrusive character of a tax audit requires the procedure to be surrounded by special guarantees intended to assure its impartiality, objectivity, neutrality, and transparency. Still the feeling of repression experienced by the taxpayer can result in resistance to tax audits, which can in turn contribute to tax evasion and tax avoidance.

That said, tax administrations do not have sufficient personnel or resources at their disposal to control all taxpayers. Bearing in mind the ever-growing budgetary restrictions, the number of taxpayers can only diminish in the following years. Even if the tendency were reversed, the number of tax auditors could never be parallel to the number of taxpayers. Therefore, countries are obliged to find a new, more contemporary way to encourage tax compliance.

A new approach of tax authorities towards the taxpayers, based on the notion of tax compliance, has entirely modified their relationship. This trend began in many European and non-European countries in the 70s and the 80s, which was a time of reform of certain tax law instruments as well as a time of change in the attitude towards taxation, which left a mark on the behaviour of tax authorities (Rogić-Lugarić & Čičin-Šain, 2014, p. 347).

The tendency of improving the relationship between the tax administration and the taxpayers is certainly present in France. Besides the initial political legitimacy of taxation, which manifests itself in the form of parliamentary consent when tax laws are voted in, there is a form of managerial legitimacy, based on the idea that the attitude of the tax administration is an important factor for the consent of citizens to the application of tax laws. This managerial legitimacy in tax matters means, on the one hand, that high quality services need to be rendered to the taxpayers, and on the other hand, that public expenditure stays in control by lowering the cost of tax collection. Thus the approach needs to focus more on prevention than repression. The objective is to promote and to reinforce tax compliance; that is, the acceptance of taxes, by favouring spontaneous rather than compulsory payment of taxes (Bouvier, 2012, p. 25).

### 3. Clarifying the Terminology

There are several terms that appear in the literature: enhanced relationship, cooperative compliance, and horizontal monitoring.

The term “enhanced relationship” was coined by the Forum on Tax Administration (FTA) and used in the 2008 *Study into the Role of Tax Intermediaries*. It was used to describe a conceptual framework for more cooperative relationships between taxpayers and revenue bodies. Basically, the study recommended that revenue bodies should look to establish a tax environment in which trust and cooperation can develop, so that enhanced relationships with large corporate taxpayers and tax advisors can be established.

The 2008 study considers that establishing and sustaining mutual trust between taxpayers and revenue bodies can be achieved through the following behaviour:

- in dealings with taxpayers, revenue bodies need to demonstrate understanding based on commercial awareness, impartiality, proportionality, openness through disclosure, and transparency and responsiveness; and
- in dealings with revenue bodies, taxpayers need to provide disclosure and transparency (OECD, 2008, p. 40).

Since 2008 many revenue bodies have implemented compliance risk management strategies which are based on the pillars established in the study. The development of cooperative relationships with large businesses is now embedded in these strategies.

However, the term “enhanced relationship” raised questions about the nature of the approach and whether it can lead to connotations of inequality in tax treatment. Hence the OECD suggested that a new term be used; namely, “cooperative compliance”, which not only describes the process of cooperation but also its goal – compliance (OECD, 2013b, p. 13).

Finally, the term “horizontal monitoring” is used by the Netherlands to refer to the model they have designed. However, the term has started to be used by other countries as well, and can in a way be viewed as an interchangeable term. For example, the Slovenian tax administration also uses this term to refer to their programme.

### 4. Compliance Programmes

The Netherlands is a country that stands out as a pioneer in the field of tax compliance programmes. In 2005, the tax authorities conducted a survey



among large companies that revealed some criticism aimed at the way the tax administration conducted its tax audits. Two points were singled out, the first one being mistrust. In other words, the companies regarded the approach of the tax authorities as though all the company actions were driven by the motive to minimise their tax burden. The other objection was that the audit methodology was considered to be unpleasant and focused on financial years that were closed long ago. The problem with this was that gathering this information was time-consuming and costly. Together with the changes that occurred in the International Financial Reporting Standards (IFRS), it became clear that the old vertical monitoring model was no longer appropriate and that there was a need to switch to a horizontal approach, which meant concluding compliance agreements and making arrangements about the degree of efficiency and intensity of horizontal monitoring. Therefore, in 2006 and 2007, the Netherlands Tax and Customs Administration (NTCA) organised pilot projects in which a total of 40 companies took part. Experiences of both the NTCA and the companies were very encouraging and the advantages of the new approach were rapidly recognised (Poolen, 2010, p. 18).

France, on the other hand, began its programmes in 2012, and 11 companies out of the 27 which applied were selected (MEF, 2013). Slovenia started its project in 2010 under the title of “Horizontal Monitoring”, as a consequence of establishing the strategic business plan of the Slovenian tax administration for the period 2010–2013 (TARS, 2010). As stated before, the Croatian tax administration introduced the legal framework for this kind of monitoring in May 2015.

## 5. Benefits of Such an Approach

The idea behind the horizontal monitoring approach, as opposed to the vertical monitoring approach – that is, the old approach based on repression – is that it enhances compliance. Compliance is defined as citizens and businesses satisfying four basic tax obligations: to register for tax purposes, to file tax returns and do so on time, to correctly report tax liabilities, and to pay taxes on time (OECD, 2008). However, taxpayers can be divided into compliant taxpayers who fulfil their tax obligations and non-compliant taxpayers who are not willing to fulfil their tax obligations. Some of those compliant taxpayers are compliant due to fear of repression, whilst others are “intrinsically” compliant; i.e., motivated by their own internal sense of the obligation to pay tax. The latter group of taxpayers may be described as “voluntary” (Gribnau, 2015).



The main goal of the horizontal monitoring approach is to enhance precisely the voluntary type of compliance. The way a tax administration conducts itself with the taxpayers can have a profound impact on the way taxpayers act in return. The tax administration's compliance strategy may enhance compliance by taking into account – and acting accordingly – the causes of non-compliant behaviours of taxpayers, ranging from lack of knowledge to fraud. It can also enhance their voluntary compliance.

Therefore, the tax administration can focus more on those taxpayers who are not compliant and make better use of their resources (human and financial). This dual approach can be summarised in the phrase used by the Dutch tax administration: "Flexible when possible, strict where necessary".

On the other hand, taxpayers profit from legal certainty. This is especially true for large taxpayers who operate on an international scale and face complex financial and fiscal structures. They also face constant amendments to the legislation with which they should comply. Based on the results of horizontal monitoring processes so far, the advantages that the taxpayer perceives in the enhanced relationship are: 1) a reduction of the time-consuming components of tax compliance, 2) the updating and upgrading of their knowledge, and 3) greater tax certainty (Čop et al., 2013).

However, not all taxpayers fulfil the criteria to take part in such a programme.

## 6. Selection Criteria

The criteria used by the NTCA are the following. The first step is to conduct a compliance scan, whose goal is both to assess the organisation and to review the feasibility of horizontal monitoring. The compliance scan is conducted by carrying out interviews with a number of key officers in the company. Its intention is to yield an improved insight into the tax attitude of the organisation and the parties involved, and the fulfilment of the preconditions attached to the achievement of adequate tax control. The information about the organisation gathered in this way gives more depth to the client profile and is directly used in determining the form and intensity of the supervision and its prioritisation (Belastingdienst, 2013, p.17). During the meeting, the following issues need to be discussed: (1) strategic objectives – the focus is on the manner in which the organisation's strategic objectives demonstrate its attention to compliance with the regulations, (2) internal control environment – the focus is on the

manner in which the organisation's internal control devotes attention to tax matters, (3) information systems – the focus is on the manner in which the organisation devotes attention to information systems of relevance to tax, (4) tax function – the focus is on the manner in which the organisation has given shape to the performance of its tax function, and (5) external monitoring and advice – the central question is which role external supervisors and specialists play in the organisation's tax control, as well as compliance, attitude, and behaviours of the company. Potential partners in these discussions include members of the executive board, the head of the tax department, controller, and compliance officer (Belastingdienst, 2013, p. 21).

The criteria employed by the French legislator are similar to those employed by the Dutch lawmaker. Thus the taxpayers that participated in the programme were objectively examined, taking into account their tax situation, their financial situation, their domain of activities, and their size. From the 27 companies that applied, 11 were selected, with profiles varying from small and medium-sized enterprises to very large companies, and coming from a range of sectors (industry, finance, and services). Attention was also paid to their geographical location, so that they were not all located in Paris. Therefore, the following companies were selected: some entities of the BPCE Group, Feel Europe Group, GRTgaz (GDF Suez Group), some companies of the General Electric Group, Dr. Pierre Ricaud of the Yves Rocher Group, Sicar, Sinequa, and Viessmann Limited (MEF, 2013, p. 5).

In Slovenia, out of 721 large taxpayers in 2010, 18 responded and were included in the pilot project of horizontal monitoring. Agreements were signed between the Slovenian tax authorities and three groups of taxpayers: 1) 13 finance and insurance companies, 2) 2 pharmaceutical companies, and (3) 3 other large companies (Šinkovec, 2012). The key criterion for the selection process was the result of the risk assessment procedure; in other words, the tax administration needed to make sure that the taxpayer would indeed fulfil the obligations undertaken in the concluded agreement.

According to Croatian law, special status can be attributed to taxpayers who satisfy the following criteria:

- they have received an auditor's report without reservations over the last three years;
- they have established an internal control system;
- they agree to inform the tax administration of all their decisions that could have an impact on their tax situation;
- the members of their management board have not been convicted of a crime in the last three years;

- the information that the tax administration possesses indicates that the taxpayer will respect the obligations that it has undertaken in order to get the special status. The following information will be taken into consideration: compliance with deadlines for submitting tax forms, compliance with deadlines for paying tax, and the results of previous and current tax audits.

One can see that Croatia has a rather detailed list of requirements for the special status to be granted. We deem this to be a positive thing because the more objective criteria the legislation sets out, the lesser the chance that the status is granted on an arbitrary basis.

## 7. Principles and Objectives of the Procedure

When examining the procedures, it can be seen that they are all based on the following principles: trust, transparency, and mutual understanding. These principles are also stated in Art. 2, point 3 of the Croatian Rulebook. The French agreement cites three other principles: availability, pragmatism, and consideration for technical and operational constraints (Art. 2 of *Protocole de coopération en vue d'une revue contradictoire de la situation fiscale de l'entreprise appelée relation de confiance*). The whole procedure is entered into on a voluntary basis; it is the company that approaches the tax administration.

The objective of the procedure in France is to obtain an informal validation of the tax year within six months that follow the closing of the books. The procedure of validation can last from three up to nine months, depending on the size of the company and the complexity of the questions treated.

In Croatia, the objective of the procedure is not determined in such a precise manner. Art. 2 of the Rulebook simply states that the aim is to reduce tax risks managed by taxpayers and to enhance voluntary tax compliance of taxpayers. It seems that horizontal monitoring in Croatia can encompass several tax years. The same applies to Slovenia and the Netherlands. The aim is to have a continuous monitoring system put into place.

## 8. Structure of the Procedure

The procedure can be divided into five consecutive steps: 1) initiation of the procedure for obtaining special status, 2) creating the taxpayer's pro-

file, 3) introductory interview with the taxpayer, 4) concluding the compliance agreement, and 5) evaluation of the results.

The initiation procedure is basically the beginning of the whole procedure, where the taxpayer approaches the tax administration with a written request to be granted the status. All the countries had set a limit on the number of taxpayers that could obtain the status, at least in the pilot project, in order to limit the number of applicants and ensure that the administration was not flooded by requests they could not handle.

In the Croatian Rulebook, the company is required to submit a written statement including the following information:

1. a description of the activities, management, and control of the company; a short description of the business surroundings and the structure of suppliers and buyers; information on the ownership structure; the basic principles of the strategic plans; the way of measuring the company goals; and a succinct plan of managing human resources;
2. a description of internal control, audit results over the last three years, and a brief description of managing the main business risks;
3. a short list of the main tax risks and the instruments used to manage these;
4. experience of previous communication with the tax administration and its expectations regarding the special status they have applied for;
5. information on the contact person.

In addition to the application, the taxpayer also needs to provide a written statement that they will inform the tax administration of all business decisions which could generate a certain tax risk, as well as provide credible documentation that the board members have not been sanctioned for a crime in the previous three years.

The next phase sees the creation of the taxpayer's profile. This phase includes using information from tax administration databases, data from other supervisory authorities, publicly available data about the taxpayer, and the data submitted by the taxpayers themselves. This last part is of particular importance because the taxpayer undertakes the obligation to inform the tax administration about all potential tax risk activities in a comprehensive and timely manner. The taxpayer's profile is used by the working group of the tax administration to define the critical segments of the taxpayer's activities on which their attention should be focused (Verbič et al., 2014, p. 69).

Afterwards, equipped with the taxpayer's profile, the tax administration will call the taxpayer to an introductory interview. The Croatian Rulebook does not specify which issues need to be addressed during the initial interview. According to the Dutch tax administration, the introductory interview should serve to open a discussion in the following important areas: 1) the strategic objectives of the taxpayer, 2) the internal tax control framework, 3) the information system, 4) the tax functions, 5) external supervision, and 6) attitude and behaviour (*supra*).

The Croatian tax administration needs to respond to the taxpayer within thirty days of receiving the written request.

If in the previous steps the tax administration and the taxpayer have come to the conclusion that it would be justified, prudent, and useful to grant the special status to the taxpayer, they will proceed to the conclusion of an agreement.

The Croatian Rulebook is rather detailed regarding the rights and obligations of both parties (Art. 10). Accordingly, the taxpayer needs to pay taxes in a timely manner, taking into account all existing tax regulations. The taxpayer is also required to submit tax returns and reports as soon as possible; that is, straight after concluding the tax year. A system of internal control and an external audit procedure need to be established. The taxpayer undertakes the obligation to give the tax administration insight into all relevant facts and circumstances from which a certain tax risk can arise, as well as to give their legal opinions on tax questions and their consequences. Finally, the taxpayer needs to give the tax administration all the data they require in a comprehensive and timely manner.

The tax administration, on the other hand, needs to harmonise the manner and intensity of monitoring the quality of internal and external audit procedures. It needs to give advice, guidance, and issue legal opinions when the taxpayer has a question about a current or future legal issue. This needs to be accompanied by detailed consultations with the taxpayer and discussions regarding the relevant tax issues, especially those on which the tax administration has a different stance.

The tax administration needs to promote working in real time; in other words, it needs to address the taxpayer's issues and demands in the shortest time possible.

The tax administration needs to resolve pending tax issues and determine further procedures regarding these issues. In case an issue arises that requires a tax audit procedure, the tax administration will terminate the agreement.

The Croatian Rulebook provides for conditions in which the special status can be revoked (Art. 12). This is performed by terminating the agreement, and both parties are permitted to do that. However, before terminating the agreement, the party wishing to perform the termination needs to provide the other party with an explanation in the form of a written statement. Moreover, termination of the agreement is not possible without giving an explanation if the other party requests one. There seems to be some confusion regarding whether the explanation needs to be in written or oral form. Namely, Art. 12, point 2 of the Rulebook states that each party to the contract can cancel it, providing a written explanation is given of the reasons for the cancellation. On the other hand, points 3, 4, 5, 6, and 7 mention an oral explanation that needs to be requested in writing within thirty days of the receipt of the notification that the agreement has been terminated. The other party has fifteen days to provide the explanation. If neither of the parties request an oral explanation, then the agreement will be terminated within thirty days of receiving the notification of termination. The tax administration may terminate the agreement unilaterally and with immediate effect in case of any indication that an audit procedure needs to be conducted. In that case, the tax administration needs to inform the taxpayer or its counsellor of the termination of the contract within eight days of said termination.

All in all, some criticisms may be levelled at the way termination of the agreement is regulated in the Croatian Rulebook. There seem to be three ways that an agreement can be cancelled: by written notification accompanied by a written explanation of the reasons; secondly, by written notification unaccompanied by an explanation (which can then be requested by the other party); and lastly, a unilateral way of cancelling the agreement that is reserved for the tax administration.

It remains unclear why there are two possible ways of cancelling the agreement, depending on whether the explanation is given in writing or orally. This might be a nomotechnical error.

In any case, the termination of the agreement can bring about some difficulties. First, engaging voluntarily in the horizontal monitoring programme requires a significant investment on part of the taxpayer. A taxpayer who opts out of a contract therefore has to face the loss of that investment. Secondly, taxpayers who intend to terminate the contract may fear unfair treatment by the tax administration and may be afraid of increasing distrust and, as a result, the tax administration increasing its vertical monitoring. Thirdly, they may fear that terminating a contract

may harm their reputation, for these contracts can sometimes be seen as a warranty of quality by their stakeholders.

In the French law the obligations are fundamentally the same (Art. 8 of the *Protocole de coopération en vue d'une revue contradictoire de la situation fiscale de l'entreprise appelée relation de confiance*). However, there seem to be some differences in guarantees given to the taxpayer. For instance, the protocol explicitly states that the company can file a corrected tax return for all tax periods for which the statute of limitations has not expired, without any penalties or interest on late payment.

Furthermore, the French law explicitly says that all positions that the French tax administration expressly assumes regarding the taxpayer can be used against the tax administration in future, not only by the taxpayer, but also by members of the same group. On the other hand, the Croatian taxpayer does not have such a guarantee.

Another guarantee that is present in Art. 9 of the French protocol, but is missing in the Croatian Rulebook, is the one according to which the tax administration cannot use the information presented during the horizontal monitoring procedure in any other procedures or for any other purpose, besides that determined by the agreement (Art. 9 of the *Protocole de coopération en vue d'une revue contradictoire de la situation fiscale de l'entreprise appelée relation de confiance*). The Croatian General Tax Act does indeed provide for tax secrecy in its Article 8, but this provision only prevents the tax administration from disclosing the information to third persons who are not employees of the tax administration or who do not have a particular legal interest in possessing that information.

The question that remains unanswered is whether it is possible to use the information gathered in the horizontal monitoring procedure against the taxpayer in another procedure that was not covered by the agreement. On the one hand, this would oppose the principle of trust between the taxpayer and the tax administration, and render the taxpayers unwilling to engage in such a procedure.

On the other hand, if the taxpayer has disclosed information to the tax administration which the taxpayer then later on chooses to withhold from tax administration, one cannot qualify this as fair behaviour on the part of the taxpayer either. For the sake of clarity, it is this author's opinion that this matter should be expressly settled by including an explicit provision in the Rulebook.

The French law also provides for an interesting way to resolve disagreements. At the end of the procedure, the administration needs to produce a



written opinion regarding the issues that were discussed during the monitoring procedure. This can then be used by the company in any further procedures which the tax administration undertakes against the company. However, it is conceivable for the tax administration and the company to be unable to reach an agreement during the horizontal monitoring procedure. In case the company opposes the views of the tax administration, it can request a second review provided by the *Service juridique de la fiscalité*. This service will engage in a re-examination of the issue. The only consequence is interest charged for late payment.

Following this line of thought, one can ask whether the possibility of a judicial review of the tax administration's decision should be allowed, regarding the administration's choice to conclude an agreement or not, during the execution of the agreement, or concerning the termination of the contract. This seems to be a point that raises some questions. Given the trust-based nature of the whole relationship, one can argue that a judicial review of the process goes against the whole idea of a relationship founded on cooperation. Perhaps a mediation process would be more in line with the basic principles of the procedure. However, mediation in Croatian tax law is still non-existent, even though some scholars are recommending its implementation (Rogić-Lugarić & Čičin-Šain, 2014).

## 9. Results

A survey conducted by one of the big four audit companies demonstrates that although participation in horizontal monitoring programmes in the Netherlands remains limited, the overall results are satisfactory. For instance, from a pool of 721 corporate tax executives, only 13% were involved in a horizontal-type monitoring programme. However, 80% of those involved said their overall experience had been positive. The major benefits pointed out by the respondents were: 1) reaching certainty on tax issues sooner (38%), 2) a more efficient use of resources (30%), and 3) limiting the focus of the audit to significant/material processes (23%) (Petruzzi & Spies, 2014, p. 650).

In France, the pilot project has not yet made its results public, although publication was expected in September 2015.

In Slovenia, the horizontal monitoring process has proven to be successful. As stated previously, out of 721 large corporate taxpayers in Slovenia, 18 were included in the horizontal monitoring process; namely, 13 from

the finance and insurance industry, 2 from the pharmaceutical industry, and 3 from the category of “others”. Based on experience and evidence to date, taxpayers are showing a greater willingness to cooperate with the Slovenian tax administration and disclose the tax risks of their operations (Verbič et al., 2014, p. 75).

It is still far too soon to assess the success of the programme in Croatia. The call to corporations was issued only recently and to this date no agreements have been signed. It will be interesting to see which companies will choose to participate in the pilot programme. Even if it is not be possible to discover the exact names of the taxpayers taking part in the procedure due to tax secrecy, their profile, i.e., their sector of activity can provide us with interesting information (retailers, finance companies, or others).

## 10. Conclusion

Even though it is too early to determine whether the horizontal monitoring procedure in Croatia is efficient or not, because it has only been recently introduced and there are no data on the results of the procedure, it is safe to say that the Croatian legislation, based on the Dutch model, is sufficiently elaborate and contemporary in order to provide a good starting point for successful horizontal monitoring procedures to take place.

The only point that could potentially present a problem is the capacity of the Croatian tax administration to conduct these procedures. Indeed, the aim of these procedures is to provide for a preventive monitoring system and to prevent later tax audits. Therefore, the tax administration needs to take special care when assessing the information provided by the taxpayer because subsequent tax audits are, in principle, not allowed. One can only imagine the extent of caution that needs to go into the evaluation of the data provided. This could present a challenge, bearing in mind the scarcity of human resources at the disposal of the Croatian tax administration, especially those highly trained in these delicate issues.

If the Croatian taxpayer does not have the impression that the tax administration's obligations or capacities can match the degree of transparency that is required of the taxpayer, they might be reluctant to engage in such a procedure.

Another point that needs to be addressed is the utilisation of the information disclosed by the taxpayer in case the procedure comes to an abrupt end. This can also make the taxpayers unwilling to engage in the procedure.

Bearing all this in mind, the introduction of a horizontal monitoring procedure in Croatian law represents a step forward towards the modernisation of the tax administration. It might enable the tax administration to lower its tax audit costs (very high for both the tax administration and the taxpayer), and it could facilitate foreign investments due to a more favourable tax climate.

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## A NEW APPROACH OF THE CROATIAN TAX ADMINISTRATION TOWARDS TAXPAYERS BASED ON COOPERATION INSTEAD OF REPRESSION: A TRUE CHANGE IN ATTITUDE

### Summary

*In this article the shift in the tax administration's approach towards taxpayers, which is more based on co-operation than repression, is being analysed. This new approach, advocated by the Organization for Economic and Cooperation Development (OECD), is present in a growing number of countries and serves as an additional tool for ensuring timely tax collection. Croatia recently adopted legislation regarding co-operative compliance, which makes the topic a highly interesting one especially knowing that there is a lack a research concerning this topic in Croatia. By performing a comparative analysis with selected countries (the Netherlands, France and Slovenia), the following issues are discussed: the reasons for such a change in attitude, the way terminology is used by the leading organisations in the field, the way the change in attitude manifests through compliance programmes, what are the selection criteria for participating in the programmes, the main principles and objectives of the procedure, the way the pro-*

cedure is structured, and the results of the co-operative compliance programmes. Finally, some concluding remarks are presented.

Keywords: *enhanced relationship, co-operative compliance, tax evasion and avoidance, Croatian tax administration*

### NOVI PRISTUP HRVATSKE POREZNE UPRAVE ODNOSIMA S POREZNIM OBVEZNICIMA NA TEMELJU SURADNJE UMJESTO REPRESIJE – STVARNA PROMJENA STAVA

#### Sažetak

Posljednjih godina dolazi do promjene u odnosu poreznih službi prema poreznim obveznicima koji su više zasnovani na načelima suradnje nego represije. Tu promjenu koju posebice zagovara Organizacija za ekonomsku suradnju i razvoj (OECD) uvodi sve veći broj država kao komplementarnu metodu za osiguranje pravovremene i potpune naplate poreznih dugovanja. Tako je i Hrvatska nedavno uvela zakonsku osnovu te pravilnik koji omogućava dodjelu posebnog statusa poreznom obvezniku u svrhu promicanja dobrovoljnog ispunjenja poreznih obveza. S obzirom na to da su ti propisi stupili na snagu nedavno, malo je istraživanja provedeno na tu temu, što ju čini posebno zanimljivom. U ovom se radu stanje u Hrvatskoj uspoređuje sa stanjem u Nizozemskoj, Francuskoj i Sloveniji. Prikazuju se razlozi za takvu promjenu u pristupu, obrađuje se terminologija znanstvene literature radi pojašnjenja pojmova, prikazuju se programi zasnovani na novom pristupu odnosu s poreznim obveznicima te kriteriji za odabir sudionika u tim programima, glavna načela te svrha programa, faze unutar procedure te najzad rezultati programa. Naposljetku, ocjenjuje se dosadašnje stanje hrvatske legislative u ovom području.

Ključne riječi: *poboljšani odnos, suradnja u provedbi poreznih propisa, nezakonito i zakonito izbjegavanje porezne obveze, hrvatska porezna služba*